

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

To: The Commission

PETITION FOR RECONSIDERATION OR CLARIFICATION

Nextel Communications, Inc., on behalf of its wholly-owned subsidiaries (collectively “Nextel”) and pursuant to Section 1.429 of the Commission’s Rules¹, respectfully submits this Petition for Reconsideration or Clarification of the Federal Communications Commission's (“Commission’s”) Second Report and Order issued April 30, 2003 in the above-referenced proceeding.² As the Commission is aware, Nextel’s interest in the Commission’s schools and libraries program is longstanding. Schools and libraries want flexible wireless service options responsive to their needs, and Nextel participated in the Commission’s “E-rate Reform Notice” to provide its perspective on the program changes necessary to accomplish these goals and ensure the program’s beneficiaries are properly served.

Nextel applauds the steps the Commission has taken in its Second Report and Order to clarify that wireless services are eligible for funding through the schools and libraries program to the same extent wireline services are eligible. The actions the Commission has taken will provide greater guidance to participating schools and libraries. Additional clarification is needed, however, to dispel remaining ambiguities

¹ 47 C.F.R. §1.429.

concerning eligible use of wireless communications. It has been Nextel's experience that if there is ambiguity regarding whether a particular service is eligible for funding, schools and libraries will not choose that service, even when it is ideally suited to their needs, for fear their entire funding request may be rejected.³ While the Commission has made great strides toward technological neutrality, Nextel respectfully requests that the Commission further clarify its actions as requested herein.

I. The Commission should clarify that the use of wireless communications services for security purposes is eligible for funding.

In its Second Report and Order, the Commission clarified that funding is available for telecommunications services used for "educational purposes" and defined "educational purpose" as being "integral, immediate, and proximate to the education of students".⁴ In addition, the Commission established a presumption that telecommunications services used on school premises are being used for an educational purpose.⁵ The Commission did not, however, explicitly address whether the use of wireless communications services by school or library personnel solely for security purposes would be consistent with this presumption of an educational purpose. Given the critical nature of security to the educational environment, the Commission must clarify for E-rate applicants that safeguarding school/student security is an eligible use of wireless telecom services. Without such clarification, applications could be improperly denied. Based on Nextel's experience to date, USAC has rejected some funding

² *Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202 (2003) ("Order").

³ The Commission's formal adoption of USAC's 30 percent rule of administrative convenience, while understandable, still creates uncertainties for program beneficiaries. These applicants may want to use certain services that should be eligible, but may ultimately be concerned enough about their eligibility and the resulting impact on the rest of their application that they forgo requesting services where any ambiguity about funding remains.

⁴ *Order*, 18 FCC Rcd at 9208.

applications because security is listed as one of the proposed uses, even when security is not listed as the sole intended use. Thus, clarifying the Eligible Services list is critical to ensuring schools have access to wireless services for security purposes.

As the Commission is aware, the Eligible Services list maintained by the Universal Service Administrative Corporation ("USAC") specifically states that Cellular Service, "is not eligible if used only for security purposes, including security purposes on school buses."⁶ The Commission's statements in the Second Report and Order on both technological neutrality and educational purpose overrule USAC's current exception to using wireless service for security purposes. For example, the Second Report and Order observes that wireless phones can be used for security purposes such as "a school bus driver's use of wireless telecommunications services while delivering children to and from school."⁷ However, to eliminate any ambiguity as to acceptable use of wireless communications services for security, the Commission should address this issue squarely and clarify that wireless communications services used solely for security are eligible for funding.

As Nextel has noted in its previous filings, there is no restriction on the use of wireline telecommunications services for security purposes, and the Eligible Services List specifically allows funding of paging services used for security purposes. In its Second Report and Order, the Commission has taken steps to level the playing field with respect to funding of different categories of service, but it has not directed USAC to take the steps necessary to change the disparate treatment of services used for security purposes.

⁵ *Id.*

⁶ Eligible Services List of the Schools and Libraries Support Mechanism, p. 3 (updated October 18, 2002). This list is available at <http://www.sl.universalservice.org/reference/eligible.asp>.

⁷ *Order*, 18 FCC Rcd 9209 n.28.

Any continued distinction between categories of service is not only inconsistent with the objectives of the Universal Service program because it is not competitively neutral, but it also significantly and unnecessarily limits the communications options of the schools and libraries participating in the program, as there are some security needs (e.g. the school bus driver) that wireline communications simply cannot fulfill.

As the record in this proceeding demonstrates,⁸ use of wireless service within an educational setting for security purposes is “integral, immediate, and proximate to the education of students” since students and teachers cannot focus on educational objectives without being assured of their safety. It is indisputable that the use of communications services for security purposes is increasingly important in the wake of recent school shootings across the country, the "Sniper" shootings in the D.C. metro area, and the repeated terrorism alerts issued nationwide since September 11, 2001. The mobile functionality of wireless services makes them ideal for addressing security concerns since, in the event of an emergency, school personnel cannot be tethered to their desks and need the ability to communicate instantaneously.

The conclusion that wireless services are eligible for funding, even when some teachers, security personnel, or other school employees use the service for security

⁸ *See, e.g.*, Council of Chief State School Officers Comments at 16 (“Providing a safe learning environment has become a more pre-eminent school concern in light of the events in Lakewood, CO; Pearl, MS; West Paducah, KY; Jonesboro, AR; Edinboro, PA; Springfield, OR; and the events that transpired on September 11, 2001.”); California Department of Education Comments at 2 (“Cell phone service to bus drivers and paging services to school security officers are becoming more appropriate services to ensure the safety of children and should be eligible services.”); Los Angeles Unified School District Comments at 4-5 (responding to whether wireless services should be available to school bus drivers or security personnel, the commenter noted that “[n]on-teaching staff are integral to the provision of education services. Consequently, the non-teaching staff peripheral uses should be recognized as an integral part of the educational service provided by schools, and therefore should be eligible for funding.”); National Education Association, The International Society for Technology in Education, and The Consortium for School Network Reply Comments at 1 (noting the commenters’ support for E-rate funding for “wireless services used by school bus drivers, non-teaching school staff, and security personnel”).

purposes only, is fully supported by the record. Thus, to foreclose any possible debate on this point, the Commission should direct USAC to update the Eligibility List and correct the security use exclusion that currently applies to wireless services. Such action would also resolve the incongruity arising from the fact that paging service is eligible for funding when used for security service while other wireless communications services are not.

- II. The Commission should clarify that wireless service may be eligible for funding even if the school or library also subscribes to wireline service.**

An important part of any funding scheme such as the schools and libraries program is that it have specified criteria to conserve available resources so that funding can be made available to the widest pool of eligible users. The Commission appropriately takes this aspect of its task quite seriously, and has adopted and proposed a variety of measures to curb fraud, waste and abuse.

The Commission has taken important steps to clarify that wireless telecommunications services are eligible for funding to the same extent as other telecommunications services. However, in the Second Report and Order, the Commission also announced a new criteria for determining eligibility: that "duplicative services" are ineligible for funding. This new criteria may create a "chicken and egg" problem for program participants depending upon how broadly or narrowly USAC applies the Commission's pronouncement. Simply stating that duplicative services are ineligible does not provide enough guidance for schools and libraries to make an informed determination regarding the circumstances under which services may be deemed duplicative -- particularly wireline and wireless services, which should clearly be defined as complementary rather than duplicative.

To ensure that schools and libraries take advantage of the E-rate program's benefits, the Commission should expressly acknowledge that wireless services are eligible for funding even if the school or library already subscribes to wireline service. Failure to provide this clarification will result in a program that violates its own principles of neutrality by awarding a "first in field" advantage to wireline technologies, regardless of the cost effectiveness and complementary nature of wireless services. The

mobile functionality of wireless services makes them different, unique and, therefore, not "duplicative".

The Commission has already acknowledged that wireless service is eligible for funding when used in place of wireline for basic telephone service.⁹ Nextel therefore requests that the Commission recognize that wireless service may be eligible for funding when used not just in place of, but also in addition to, wireline service. For example, it must be clear to applicants that wireless service is eligible for funding when used for basic service for some school or library staff members even if wireline service is already funded for other staff members or uses. This clarification would give schools the flexibility to purchase wireless service for some personnel, such as physical education staff or administrators who are not tied to a desk on a regular basis, while purchasing standard landline service for other personnel. Schools should have the flexibility to determine the appropriate mix of wireline and wireless services for their staff.

Some data services that may prove extremely useful to schools and libraries are only available in a wireless setting, and schools and libraries should have the flexibility to use such services despite subscribing to wireline telecommunications/Internet services. For example, school bus drivers in some metropolitan areas may be able to use hand-held devices to obtain real-time traffic information and could use this information to more efficiently plot their routes – particularly on days where significant accidents or local events create bottlenecks along major thoroughfares.¹⁰

⁹ *Order*, 18 FCC Rcd at 9211.

¹⁰ For instance, the State of Maryland, through its Department of Transportation, is one state that provides links to live traffic feed that can be used for this purpose. See <http://www.chart.state.md.us/TravInfo/trafficCams.asp>. In addition, local jurisdictions such as the Montgomery County, Department of Public Works and Transportation, also make this data available. See www.dpwt.com/jpgcap or <http://www.chart.state.md.us/TravInfo/trafficCams.asp>

In addition, the Commission should acknowledge that wireless Internet service is eligible for funding as long as the specific user or location at the school or library does not also have in-classroom or in-office access to wireline Internet service. This would expand the service options of participating schools and libraries, could save schools and libraries significant resources, and would provide some schools and libraries a much-needed alternative to wireline services. For example, in contrast to a traditional local area network ("LAN"), installation of a wireless LAN requires significantly less infrastructure, and can, therefore, be a welcome alternative to schools and libraries whose facilities present unique problems, including the necessity of disturbing hazardous materials (e.g. asbestos) when installing a terrestrial LAN or when other structural concerns exist.

If the Commission does not clarify this matter, schools and libraries will be less likely to take advantage of wireless offerings, given the risk that some or all their funding request will be denied. As a result, schools and libraries will be denied the flexibility to design a communications system that best fulfills their communications needs.

III. The Commission should clarify that voicemail and e-mail are not duplicative services.

In the Second Report and Order, the Commission clarified that voicemail is now eligible for funding under the program. In reaching this conclusion, the Commission stated that it agreed with commenters that voice mail is "functionally equivalent" to e-mail.¹¹ While providing the necessary basis for its decision that voicemail is eligible for funding, the Commission's statement may also create unnecessary confusion if the Commission does not provide clarification. By characterizing these two services as "functionally equivalent," the Commission may have inadvertently suggested that the two

¹¹ *Order*, 18 FCC Rcd at 9212.

services are “duplicative” under the Commission’s new standard. While Nextel does not believe this characterization was intended by the Commission, the statement is, nevertheless, ambiguous and must be clarified to ensure that school/library applicants (as well as USAC staff reviewing those applications) know that voicemail and e-mail are not "duplicative".

IV. The Commission should clarify that a company will not be debarred when an individual acts without the company's knowledge or authority.

In the Second Report and Order, the Commission established that any "person" who is "convicted of, or held civilly liable for, the attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or other fraud or criminal offense arising out of activities associated with or related to the schools and libraries universal service support mechanism shall be debarred from involvement with the schools and libraries support mechanism for a period of three years."¹² Nextel supports the Commission's efforts to limit instances of fraud, waste and abuse in the program. However, the rules, as adopted, are too broad as they appear to debar a corporation even if an individual or contractor¹³ acts without actual knowledge or consent of a corporation or outside the scope of his/its authority.

Nextel, has a staff dedicated to overseeing the company's participation in the E-rate program, including training programs for those employees working with school and library customers. No company, however, can control the actions of every one of its employees at all times. Where a company does not have knowledge of an individual's or

¹² *Id.* at 9225.

contractor's actions or where the individual or contractor acts outside the scope of his/her/its authority, the company should not be penalized for the actions of that individual or contractor. Therefore, Nextel respectfully requests clarification that an entire company will not be debarred from participating in the E-rate program based upon the acts of an individual or contractor acting outside the scope of his/its authority.

¹³ This should include an independent contractor participating in the company's third-party distribution chain.

CONCLUSION

For the reasons discussed herein, Nextel respectfully requests that the Commission clarify certain aspects of its E-rate program to provide schools and libraries with sufficient guidance regarding the services that are eligible for funding.

Respectfully Submitted,

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